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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

2002 DEC 31 A 8: 26

WILLIAM A. MUNDELL
Chairman
JIM IRVIN
Commissioner
MARC SPITZER
Commissioner

DOCKETED

DEC 31 2002

NEW
AZ CORP COMMISSION
INVESTMENT CONTROL

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In the matter of:

) DOCKET NO. S-03510A-02-0000

ELLIOT CROSBY
d/b/a ADVANCE SENIOR ESTATE
PLANNING
10253 East Jerome
Mesa, Arizona 85208

)
) NOTICE OF OPPORTUNITY FOR HEARING
) REGARDING PROPOSED ORDER TO
) CEASE AND DESIST, FOR RESTITUTION,
) FOR ADMINISTRATIVE PENALTIES, AND
) FOR OTHER AFFIRMATIVE ACTION

MARSHA CROSBY
2145 East Juanita
Mesa, Arizona 85204

Respondents.

NOTICE: RESPONDENTS HAVE 10 DAYS TO REQUEST A HEARING (See VIII)

NOTICE: RESPONDENTS HAVE 30 DAYS TO FILE AN ANSWER (See IX)

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") alleges that respondents have engaged in acts, practices and transactions that constitute violations of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act").

I.

JURISDICTION

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and the Securities Act.

II.

RESPONDENT

2. Respondent ELLIOT CROSBY ("CROSBY") at all times material hereto was a resident of Arizona, and was doing business as ADVANCE SENIOR ESTATE PLANNING ("ADVANCE"). At all times material hereto, CROSBY was licensed to sell insurance in the state

1 of Arizona, but was not registered as a securities salesperson or an investment advisor representative
2 in Arizona.

3 3. At all times material hereto, Respondent MARSHA CROSBY was married to
4 CROSBY. All acts done by CROSBY were done in furtherance of and for the benefit of the marital
5 community of CROSBY and MARSHA CROSBY that existed at such times. Subsequent to the
6 actions alleged herein, the marriage of CROSBY and MARSHA CROSBY was dissolved.
7 MARSHA CROSBY therefore is joined in this action, pursuant to A.R.S. § 44-2031(C), solely to
8 determine the liability of the then existing marital community for the violations alleged herein.

9 4. CROSBY may be referred to hereinafter as "RESPONDENT." CROSBY, d/b/a
10 ADVANCE, and MARSHA CROSBY may be collectively referred to herein as
11 "RESPONDENTS." MARSHA CROSBY may be referred to herein as "RESPONDENT
12 SPOUSE."

13 III.

14 FACTS

15 Alpha Telcom, Inc.

16 5. At all times material hereto, Alpha Telcom, Inc. ("Alpha") was an Oregon
17 corporation located at 2751 Highland Avenue, Grants Pass, Oregon 97526.

18 6. At all times material hereto, American Telecommunications Company, Inc.
19 ("ATC") was a Nevada corporation formed as a wholly owned subsidiary of Alpha on or about
20 September 17, 1998. Originally named ATC, Inc., the name was changed to American
21 Telecommunications Company, Inc., sometime in the first half of 2000. Its address was the same
22 as Alpha's, but was later changed to 620 S.W. 4th Street, Grants Pass, Oregon 97526, then to 2900
23 Vine Street, Suite J, Grants Pass, Oregon 97526, and then to 942 S.W. 6th Street, Suite G, Grants
24 Pass, Oregon 97526.

25 7. At all times material hereto, Paul S. Rubera ("Rubera") was the president and
26 control person of Alpha, and the control person of ATC.

1 8. ATC was organized by Rubera and operated in conjunction with and as an alter ego
2 of Alpha. The two companies were controlled by Rubera and his associates.

3 9. At all times material hereto, Alpha and ATC, and their affiliates, sold pay
4 telephones with telephone service agreements pursuant to which the investor would share in the
5 profits of the pay telephone. Investors would enter into two agreements, a purchase agreement, and
6 a service agreement with Alpha to manage the phone. The two agreements were presented and
7 promoted simultaneously. The telephones were presented to potential investors with four options
8 in the way of service contracts, each varying in the amount of service provided. The four options
9 varied from Level 1, which included a minimum of service, to Level 4, which provided full service
10 to the purchaser, including choosing a site and installing the telephone, collecting all revenue from
11 the telephone's operation, repairing the telephone when necessary, and even repurchasing or
12 buying back the telephone at the investor's option. Under Level 4, Alpha would split the net
13 proceeds with the investor on a 70/30 basis, with Alpha retaining 70% and the investor receiving
14 30%. The price of the pay telephones was the same regardless of the service option chosen,
15 \$5,000.00 per telephone. Although investors were given a choice of using a company other than
16 Alpha to manage the phone, no known Arizona investor picked a company other than Alpha to
17 manage their phones. A "typical return" on each pay telephone was touted as 14% per year. In
18 practice, all purchasers received \$58.34 per month per pay telephone purchased, which amounted
19 to exactly 14% per annum.

20 10. ATC's primary role was marketing the contracts. Alpha's main focus was on
21 obtaining phone sites and installing, servicing, and managing the phones.

22 11. ATC was presented to the public as the sales organization for Alpha. In early 1999,
23 ATC engaged Strategic Partnership Alliance, L.L.C., a Nevada limited liability company, and/or
24 SPA Marketing, L.L.C., a Nevada limited liability corporation, (collectively "SPA") as its
25 independent marketing and sales firm(s). SPA thereafter was responsible for hiring, training, and
26 supervising sales agents who were selling the telephone contracts. After SPA came on board, ATC

1 remained as the processing center for the contracts, while Alpha continued to perform the service
2 and maintenance of the phones.

3 12. CROSBY, directly or indirectly, entered into agreements with Alpha, ATC, and/or
4 SPA, pursuant to which CROSBY sold investment contracts involving Alpha pay telephones (the
5 "Alpha investment contracts") within or from the state of Arizona. All Alpha investment contracts
6 CROSBY sold were Level 4 contracts.

7 13. CROSBY told prospective investors their investments were insured. The insurer
8 named varied. Mentioned most often was the Northern and Western Insurance Company of Grand
9 Turk, Turks and Caicos Islands, British West Indies ("N&W"). Also mentioned were Lloyd's of
10 London and four other insurance companies listed as re-insurers. N&W was a captive insurance
11 company wholly owned by Paul S. Rubera, the President and control person of Alpha, and Robert
12 S. Harrison of Richmond, Texas. N&W is not authorized to write insurance in Arizona. On
13 information and belief, N&W was not authorized to write insurance in any state in which the Alpha
14 pay telephones were located. In a letter dated August 15, 2001, Harrison stated: "There is not
15 now, nor was there ever any insurance coverage for Alpha Telcom, Inc."

16 14. CROSBY presented Alpha to prospective customers as a stable, profitable, and
17 innovative company that had been in business since 1985. Alpha was said to be selling and
18 providing a "turn-key" operation.

19 15. On information and belief, sales agents were paid commissions from 12% to 19%
20 per telephone sold.

21 16. Pursuant to this commission schedule, CROSBY sold Alpha investment contracts
22 involving at least 426 telephones to at least 23 individuals or entities within or from the state of
23 Arizona from May, 2000 through May, 2001, for a total sales amount of at least \$2,130,000.
24 CROSBY, through ADVANCE, earned commissions on these sales in an amount, on information and
25 belief, not less than \$293,550.

26 17. Alpha has a long regulatory history in which state securities regulators have found that

these purchases of pay telephones and accompanying service contracts were unregistered securities in the form of investment contracts that were sold by unregistered persons and/or entities, and ordered Alpha and those working with it to cease and desist. On information and belief, CROSBY did not reveal these orders to the majority of the investors with whom he dealt. The orders that CROSBY could have revealed include:

- a. February 2, 1999, Cease and Desist Order issued by Pennsylvania Securities Commission in *In the Matter of Alpha Telcom, Inc., et al.*, No. 9812-06.
- b. November 17, 1999, Cease and Desist Order issued by North Carolina Secretary of State in *In the Matter of the North Carolina Securities Division v. ATC, Inc., Paul Rubera, et al.*, No. 99-038-CC.
- c. June 30, 1999, Temporary Order of Prohibition issued by Illinois Secretary of State in *In the Matter of Alpha Telcom, Inc.*, No. 9900201.
- d. January 14, 2000, Consent Order of Prohibition issued by Illinois Secretary of State in *In the Matter of Alpha Telcom, Inc.*, No. 9900201, Alpha agreeing to offer rescission to all Illinois purchasers.
- e. November 24, 1999, Cease and Desist Order issued by Wisconsin Department of Financial Institutions in *In the Matter of Alpha Telcom, Inc. and Paul S. Rubera, et al.*, No. S-99225(EX).
- f. March 7, 2000, Temporary Cease and Desist Ordered issued by Rhode Island Department of Business Regulation in *In the Matter of Alpha Telcom, Inc. and ATC, Inc.*
- g. July 18, 2000, Florida Department of Banking and Finance filed administrative action against Alpha and others, seeking a Cease and Desist Order.
- h. October 24, 2000, Desist and Refrain Order issued by California Department of Corporations.

18. Among actions that have proceeded most recently against Alpha are the following:

- a. July 26, 2001, Cease and Desist Order issued by Ohio Commissioner of Securities;
- b. August 27, 2001, Temporary Restraining Order issued by United States District Court, District of Oregon, in *SEC v. Alpha Telcom, Inc., et al.*, No. CV 01-1283 PA

- c. September 5, 2001, Cease and Desist Order issued by Arkansas Securities Department in *In the Matter of Alpha Telcom, Inc., et al.*, No. 01-36-S.
- d. September 6, 2001, Preliminary Injunction issued by United States District Court, District of Oregon, in *SEC v. Alpha Telcom, Inc., et al.*, No. CV 01-1283 PA.
- e. February 7, 2002, Final Judgment of Permanent Injunction issued by United States District Court, District of Oregon, in *SEC v. Alpha Telcom, Inc., et al.*, No. CV 01-1283 PA.
- f. March 13, 2002, Final Order to Cease and Desist issued by Washington Department of Financial Institutions in *In the Matter of Alpha Telcom, Inc., et al.*, No. SDO-21-02.

The SEC's Complaint in the United States District Court, District of Oregon, alleged that Alpha and its affiliates engaged in a Ponzi-like scheme that never generated enough income to pay expenses, and that the money paid to existing investors always came from sales to new investors. Several days before the Temporary Restraining Order was issued on August 27, 2001, Alpha sought bankruptcy protection in Florida pursuant to chapter 11 of the Bankruptcy Code. A court-appointed receiver subsequently took over the remaining operations of Alpha. Alpha consented on October 19, 2001 to entry of the Final Judgment of Permanent Injunction against it, but did not admit the allegations of the Complaint.

19. Alpha's monthly payments to investors ceased prior to August, 2001.

IV.

VIOLATION OF A.R.S. § 44-1841

(Offer or Sale of Unregistered Securities)

20. From on or about May, 2000, CROSBY offered or sold securities in the form of investment contracts in Alpha, within or from Arizona.

21. The securities referred to above were not registered pursuant to Articles 6 or 7 of the Securities Act.

22. This conduct violates A.R.S. § 44-1841.

...

V.

VIOLATION OF A.R.S. § 44-1842

(Transactions by Unregistered Dealers or Salesmen)

23. CROSBY offered or sold securities within or from Arizona while not registered as a dealer or salesman pursuant to Article 9 of the Securities Act.

24. This conduct violates A.R.S. § 44-1842.

VI.

VIOLATION OF A.R.S. § 44-1991

(Fraud in Connection with the Offer or Sale of Securities)

25. In connection with the offer or sale of securities within or from Arizona, CROSBY directly or indirectly: (i) employed a device, scheme or artifice to defraud; (ii) made untrue statements of material fact or omitted to state material facts which were necessary in order to make the statements made not misleading in light of the circumstances under which they were made; or (iii) engaged in transactions, practices or courses of business which operated or would operate as a fraud or deceit upon offerees and investors. CROSBY'S conduct includes, but is not limited to, the following:

- a) CROSBY failed to advise purchasers of the state regulatory actions against Alpha and of the potential consequences of those orders with respect to their investment;
- b) CROSBY represented to purchasers that their investment and/or the pay telephones they purchased from Alpha were fully insured, when they were not, in fact, insured by any insurance company authorized to provide insurance in Arizona or in any state in which the pay telephones were located;
- c) CROSBY represented to purchasers that monies they would receive as a result of their investment in Alpha were derived from profits on pay telephones, when in fact the returns paid to investors came from purchases by subsequent investors.

26. This conduct violates A.R.S. § 44-1991.

VII.**REQUESTED RELIEF**

The Division requests that the Commission grant the following relief against
RESPONDENTS:

1. Order RESPONDENTS to permanently cease and desist from violating the Securities Act, pursuant to A.R.S. § 44-2032;
2. Order RESPONDENTS to take affirmative action to correct the conditions resulting from his acts, practices or transactions, including a requirement to make restitution pursuant to A.R.S. § 44-2032;
3. Order RESPONDENTS to pay the state of Arizona administrative penalties of up to five thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036; and
4. Order any other relief that the Commission deems appropriate.

VIII.**HEARING OPPORTUNITY**

RESPONDENTS (including RESPONDENT SPOUSE) may request a hearing pursuant to A.R.S. § 44-1972 and A.A.C. R14-4-306. A request must be in writing and received by the Commission within 10 business days after service of this Notice of Opportunity for Hearing. RESPONDENTS must deliver or mail the request to Docket Control, Arizona Corporation Commission, 1200 West Washington, Phoenix, Arizona 85007. A Docket Control cover sheet must accompany the request. A cover sheet form and instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at www.cc.state.az.us/utility/forms/index.htm.

If a request for a hearing is timely made, the Commission shall schedule the hearing to begin 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the parties, or ordered by the Commission. If a request for a hearing is not timely made the

Commission may, without a hearing, enter an order against RESPONDENTS granting the relief requested by the Division in this Notice of Opportunity for Hearing.

Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting Shelly M. Hood, Executive Assistant to the Executive Secretary, voice phone number 602/542-3931, e-mail shood@cc.state.az.us. Requests should be made as early as possible to allow time to arrange the accommodation.

IX.

ANSWER REQUIREMENT

Pursuant to A.A.C. R14-4-305, if RESPONDENTS request a hearing, within 30 calendar days after the date of service of this Notice of Opportunity for Hearing, RESPONDENTS or their attorney must deliver or mail an answer to this Notice to Docket Control, Arizona Corporation Commission, 1200 West Washington, Phoenix, Arizona 85007. A Docket Control cover sheet must accompany the answer. A cover sheet form and instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at www.cc.state.az.us/utility/forms/index.htm.

Additionally, RESPONDENTS or their attorney must serve the answer upon the Division. Pursuant to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-delivering a copy of the Answer to the Division at 1300 West Washington, 3rd Floor, Phoenix, Arizona 85007, addressed to Kathleen Coughenour DeLaRosa.

The answer shall contain an admission or denial of each allegation in this Notice and the original signature of RESPONDENTS or their attorney. A statement of a lack of sufficient knowledge or information shall be considered a denial of an allegation. An allegation not denied shall be considered admitted.

When RESPONDENTS intend in good faith to deny only a part or a qualification of an allegation, RESPONDENTS shall specify that part or qualification of the allegation and shall

1 admit the remainder. RESPONDENTS waive any affirmative defense not raised in the answer.

2 The officer presiding over the hearing may grant relief from the requirement to file an
3 answer for good cause shown.

4 DATED this 31ST day of DECEMBER, 2002.

5
6 

7 Mark Sendrow
Director of Securities

8 Crosby Notice of Opportunity for Hearing.doc (KCD)

Memorandum

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2002 DEC 31 A 8: 26

AZ CORP COMMISSION
DOCUMENT CONTROL

DATE: December 31, 2002

TO: Nancy Cole
Docket Control

FROM: Kathleen Coughenour DeLaRosa
Securities Division

RE: In the Matter of Elliot Crosby, dba Advance Senior
Estate Planning, et al.
Docket No. S-03510A-02-0000
Assigned Staff

CC: Mabel Aldridge

This is to notify you that the following individuals have been assigned to the above-mentioned case.

- ☒ Mark Sendrow
- ☒ LeRoy Johnson
- ☐ Matthew Neubert

Kathleen Coughenour DeLaRosa (Staff Attorney)

Terence J. Nelson (Staff Investigator)
